IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 2172 of 2007(H)

PETITIONER:

ABDUL KABEER.C.K., DIRECTOR,
AMEEN TRANSPORT PRIVATE LIMITED,
POST OFFICE ROAD, SHORNUR.

BY ADV. SRI.PULIKKOOL ABUBACKER
SRI.ZUBAIR PULIKOOL

RESPONDENTS:
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1. **THE REGIONAL MANAGER,**
   LPG, BHARAT PETROLEUM CORPORATION LTD.,
   ANNA NAGAR, CHENNAI.

2. **THE SECRETARY,**
   MINISTRY OF PETROLEUM,
   GOVERNMENT OF INDIA, NEW DELHI.

BY ADV. SRI. AJITH KRISHNAN, ADDL.CGSC
SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN
SRI.JOHN VARGHESE, ASST.S.G.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.2172 of 2007

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Dated this the 30th day of May, 2007

J U D G M E N T

The first respondent invited tenders from transport contractors for award of contract of transporting filled and empty cylinders from oil refinery to various outlets of the 1st respondent and vice-versa. The petitioner also submitted a tender. In the tender form there is a condition that tenderers who offer vehicles which are presently on contract with other public sector oil companies or other Regions of the BPCL, have to produce NOC from the company with which there is a subsisting contract. The petitioner submitted the tender form without a NOC. Later on realising this mistake, the petitioner sent a NOC before opening of the tender along with a letter. Apprehending that his tender would not be considered because of the said defect, he approached this court by

filing W.P(C).No. 24799/2006. This court disposed of the same with a direction to the 1st respondent to consdier and dispsoe of the petitioner's request. Now the 1st respondent has rejected the request of the petitioner. It is under the said circumstances that the petitioner has approached this court seeking the following reliefs:

> "i) to issue a writ or mandamus or a direction asking the first respondent to consider the offer made by the petitioner for transporting filled and empty gas cylinder for Bharat Petroleum Corporation Ltd.
>
> ii) to direct the first respondent to invite a fresh tender with regard to the transportation work of filled and empty cylinders for Bharat Corporation Ltd.
>
> iii) to order an enquiry with regard to the contract of the first respondent and the contract awarded by the first respondent arbitrarily and without any fresh tender."

2. The petitioner submits that the petitioner's offer should have been accepted since his was the lowest in the category for which he has submitted tender and NOC was sent immediately after the tender form was sent. According to him, this was sufficient compliance with the tender conditions and therefore, 1st respondent ought not to have rejected the petitioner's tender form.

3. The first respondent has filed a counter affidavit along with which they have produced Ext.R1(b) minutes of the hearing pursuant to the judgment in W.P(C).No. 24799/2006 in respect of the claim of the petitioner. They would submit that under the tender conditions the tenderers have to either file an undertaking to the effect that the vehicles offered by the tenderers are not under any contract with other public sector oil company or with any other region of the Bharat Petroleum Corporation Ltd. and if actually they are, the tenderers should produce an NOC from the oil company with which there is contract in respect of the vehicles to the effect that there is no objection for offering these vehicles for the purpose of tender. They also point out clause 17 of the tender condition which says that if at any point of time prior to or after acceptance of the tender any of the documents submitted by the tenders, are found false/or untrue tenders will be rejected and / or the contract will be terminated at the discretion of the Corporation

and the tenderer/ contractor will be liable to make good any loss or damage suffered by the Corporation in this regard. The petitioner produced Ext.R1(a) undertaking along with his tender in which he had specifically stated that "the fleet offered by the petitioner are not in contract with other oil companies or with any other region of Bharat Petroleum Corporation Ltd." According to them, in view of Ext.P1 NOC produced by the petitioner himself, this is a false statement and therefore even assuming that the petitioner's subsequent sending of NOC is in order, the tender submitted by the petitioner is liable to be rejected outright in terms of clause 17 of the tender conditions.

4. Heard both sides.

5. Clause 10(6) of the tender conditions reads thus:

> "**Clause No.10.6:** No trucks will be offered under this tender which is presently on contract with plants in other regions of BPCL or any other PSU oil companies. In case it is detected at any stage that these trucks are running in any of the contracts BPCL reserves its right to reject the tender."

Clause 10(7) reads thus:

> "**CLAUSE No.10.7:** However, in case any trucks

> which are currently in contract with plants or other region of BPCL or other PSU oil companies, are offered by the tenderers in the tender, no objection certificate from the concerned location will be attached with the credential bid."

Clause 10(17) reads thus:

> **'CLAUSE No.17:** Consequence of submission of false / untrue statements / information / documents
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> "If any point of time prior to or after the acceptance of the tender, any of the documents submitted by the tenderer are found false and / or untrue, the tender will be rejected and / or the contract will be terminated at the discretion of the Corporation and the tenderer / contractor will be liable to make good any loss or damage suffered by the Corporation in this regard"'

In Ext.R1(a) undertaking produced by the petitioner along with the tender, which is not disputed by the petitioner, in the first paragraph, the petitioner states as follows:

> "1. That the fleet offered (reference Annexure Exh.A) under the contract to Bharat Petroleum Corporation Limited, Southern Region, are not under any contract with any other Oil Company or with any other Region of Bharat Petroleum Corporation Ltd."

6. From these two documents nobody has to go too far to find that the first paragraph in Ext.R1 (a) undertaking is a false statement since the petitioner himself has obtained Ext.P1 NOC from the Hindustan Petroleum Corporation Ltd to the effect that the trucks offered by the petitioner are

currently in contract with them. Therefore, it is evident that in Ext.R1(a) the petitioner submitted a false undertaking contrary to the real fact. Therefore clause 17 is clearly attracted and as such, there is absolutely nothing wrong in the stand taken by the respondents in rejecting the tender offered by the petitioner. Therefore, I do not find any merit in the writ petition and accordingly the same is dismissed.

In view of the counter affidavit filed, noting that in Ext.R1(a) there is a clear false statement as opposed to Ext.P1, I had suggested to the counsel for the petitioner to withdraw the writ petition so as to avoid costs. The counsel also took time to consider the same. However, when the writ petition again came up, the petitioner was not inclined to withdraw this writ petition and steadfastly contended that there is no contradiction between Ext.R1(a) and Ext.P1 and that there is no false statement in Ext.R1(a) undertaking. However, the counsel could not satisfy me about the same. In view of the unreasonable

attitude of the petitioner, I am inclined to grant exemplary costs to the 1st respondent. Accordingly, I direct the petitioner to pay an amount of Rs.10,000/- as costs to the 1st respondent.

sdk+ S.SIRI JAGAN, JUDGE